MENG LEONG DEVELOPMENT PTE. LTD.

v.

J.I.P HONG TRADING CO. PTE. LTD.

COURT OF APPEAL, SINGAPORE
T KULASEKARAM J
LAI KEW CHAI J
FA CHUA J
[CIVIL APPEAL NO. 81 OF 1981]
22 APRIL 1983

CONTRACT: *Option to buy property - Repudiation - Proper remedy.*

LAND LAW: *Entry of caveat - Effect on subsequent sale to others.*

The appellants were property developers who granted an option to the respondents to buy the property but who purported to repudiate the agreement after the respondents had exercised the option. The respondents lodged a caveat against the property, in spite of which the appellants purported to sell the property to two brothers who knew and had notice of the respondents' caveat. The respondents commenced proceedings in the High Court, claiming specific performance and damages. The Court ordered damages. The appellants appealed on the quantum and the respondents cross-appealed.

Held:
An order for specific performance was the appropriate remedy. The order of damages amounted to taking away the proprietary rights of the respondents in favour of others whose rights were subordinate to those of the respondents.

[Appeal dismissed. Cross-appeal allowed.]

Legislation referred to:
Land Titles Act, s. 103(5)

For the appellants - L.A.J. Smith
For the respondents - J. Jumabhoy (Ramason with him)

JUDGMENT

T Kulasekaram J:

At the adjourned hearing of this Appeal, we dismissed the appellants' appeal on quantum and allowed the cross appeal of the respondents. We set aside the award of $297,000 ordered by the High Court as damages payable by the appellants and we ordered instead specific performance of an agreement under which the appellants had on 23 April 1979 agreed to sell No. 27A Jalan Chengkek, Singapore (hereinafter referred to as "the property") for a consideration of $152,500. We now give our reasons.

The appellants were property developers. In late March 1979 they granted an option in writing to the respondents to buy the property. On 23 April 1979 the respondents duly exercised the option. But in the second half of May 1979 the appellants purported to repudiate the agreement on grounds which were canvassed before the High Court but which no longer need concern us save to note that they were without merits at all.

On 4 July 79 the respondents lodged a caveat bearing No. CV 27207 under the provisions of the Land Titles Act against the property to protect their interests as purchasers. Now, it is well known that the effect of the caveat under the Torrens System is to preserve the priority

and protect the interests *in rem* of the caveator against any interest subsequently appearing on the Land Register by way of a caveat., So long as a caveat remains effective the Registrar of Titles is prohibited from registering any "instrument" (as defined in the Act) which is inconsistent with the caveat: s. 103(5).

In the face of the caveat, the appellants on 17 September 1979 purported to sell the property for $126,500 to two brothers, Chou Yim Tet and Chew Yim Min, who, however, knew and had notice of the respondents' caveat.

In these circumstances, the respondents commenced proceedings in the High Court on 26 September 1979. As was noted by the learned trial Judge, the respondents had claimed for:

(i) Specific performance of the contract;

(ii) An injunction whether by themselves or their servants or agents from selling, mortgaging or otherwise dealing with the premises; and

(iii) Further or alternatively, damages for breach of contract.

At the trial, evidence was led to show that the appellants, who alleged that they were in need of money, had subsequently sold the property to the two brothers. The two brothers had moved into occupation and had carried out some renovations. Presumably on the basis of these evidence, former Counsel for the appellants, Miss Irene Lim, submitted to the learned trial Judge that by reason of what had happened, specific performance might not be the possible remedy. Counsel for the appellants, Mr. L.A.J. Smith, frankly admitted before us that he saw no reason why specific performance could not have been ordered in all the circumstances of this case.

In our view, an order for specific performance was the most appropriate remedy. All the equities were in favour of the respondents, To have ordered damages would amount to taking away the proprietary rights of the respondents in favour of the two brothers whose rights must be subordinated to the superior claims of the respondents. The two brothers are not without remedy: they should pursue their claims in their pending suit against the appellants.

Also found at [1983] 2 CLJ 104